The House Committee on State Institutions & Property offers the following substitute to HB 1030:

A BILL TO BE ENTITLED AN ACT

1	To amend various titles of the Official Code of Georgia Annotated, so as to establish a state
2	supervision division of the Department of Corrections which will be responsible for
3	supervising probationers, parolees, and persons conditionally released; to provide for a
4	director of the division; to reassign various functions from the State Board of Pardons and
5	Paroles to the new division; to provide for transition to the new division; to reorganize
6	probation officers and parole officers into state supervision officers; to provide for
7	definitions; to enlarge the Board of Corrections to include the chairman of the State Board
8	of Pardons and Paroles; to change provisions in the "State-wide Probation Act" and
9	provisions regarding the State Board of Pardons and Paroles; to provide for conformity; to
10	amend the Official Code of Georgia Annotated for purposes of conformity and to correct
11	cross-references; to provide for related matters; to provide for an effective date; to repeal
12	conflicting laws; and for other purposes.
13	BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:
14	PART I
15	STATE SUPERVISION
16	SECTION 1-1.
17	Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
18	by adding a new chapter to read as follows:
19	"CHAPTER 9A
20	ARTICLE 1
21	<u>42-9A-1.</u>
22	As used in this chapter, the term:
23	(1) 'Board' means the State Board of Pardons and Paroles.

- 24 (2) 'Department' means the Department of Corrections.
- 25 (3) 'Director' means the director of state supervision.
- 26 (4) 'Division' means the Division of State Supervision of the department.
- 27 (5) 'State supervision officer' or 'officer' means an individual who supervises persons
- 28 serving probated sentences under the department or persons released on parole or
- conditional release by the board or who provides both types of supervision.
- 30 42-9A-2.
- 31 (a) There is created the position of director of state supervision. The director shall be
- nominated and removed by the Governor, provided that such nomination and removal are
- ratified by the Board of Corrections. The director shall be a deputy commissioner in the
- department and shall report to the commissioner.
- 35 (b) The director shall be the chief administrative officer of the division and, subject to
- 36 policies set by the department, shall supervise, direct, account for, organize, plan,
- administer, and execute the duties vested with the division in this chapter and Chapters 8
- and 9 of this title.
- 39 (c) It shall be the duty of the Board of Corrections to promulgate rules and regulations
- 40 <u>necessary to effectuate the purposes of this chapter.</u>
- 41 42-9A-3.
- 42 (a) It shall be the duty of the director to supervise and direct the work of state supervision
- officers. The department shall keep accurate files and records on all probation, parole, and
- 44 conditional release cases and persons on probation, parole, and conditional release.
- 45 (b) All reports, files, records, and papers of whatever kind relative to the state-wide
- 46 probation system and persons released on parole or conditional release are declared to be
- 47 confidential.
- (c) Probation records shall be available only to probation system officials and to the judge
- 49 handling a probation case and shall not be available to any other person, institution, or
- 30 agency without the express written consent of the probation or parole unit which originated
- or accumulated such documents. Such records shall not be subject to process of subpoena.
- 52 However, the commissioner of the department may by written order declassify any such
- records.
- 54 (d) Parole supervision records shall be available only to the officials handling a parole case
- and shall not be available to any other person, institution, or agency without the express
- written consent of the board. Such records shall not be subject to process of subpoena.
- However, the board may by written order declassify any such records. The board's

58 <u>clemency records shall be subject to Code Section 42-9-53 and shall not be governed by</u>

- 59 <u>the provisions of this Code section.</u>
- 60 <u>42-9A-4.</u>
- 61 (a) The department shall employ state supervision officers and their compensation shall
- be set by the State Personnel Board and the State Personnel Administration. State
- 63 <u>supervision officers shall be allowed travel and other expenses as are other state</u>
- 64 employees.
- (b)(1) Except as provided in subsections (c) and (d) of this Code section, no state
- supervision officer, during his or her employment as such, shall engage in any other
- business or profession or hold any other public office which business, profession, or
- office conflicts with his or her official duties as a state supervision officer; nor shall he
- or she serve as a representative of any political party or any executive committee or other
- governing body thereof or as an executive officer or employee of any political committee,
- 71 <u>organization</u>, or association; nor shall he or she be engaged on the behalf of any candidate
- for public office in the solicitation of votes or otherwise become a candidate for public
- office, without resigning from the division or from employment by the division.
- 74 (2) No state supervision officer shall own, operate, have any financial interest in, be an
- instructor at, or be employed by any private entity which provides drug or alcohol
- 76 <u>education services or offers a DUI Alcohol or Drug Use Risk Reduction Program</u>
- 77 certified by the Department of Driver Services.
- 78 (3) No state supervision officer shall specify, directly or indirectly, a particular DUI
- Alcohol or Drug Use Risk Reduction Program which a probationer may or shall attend.
- This paragraph shall not prohibit any state supervision officer from furnishing any
- probationer, upon request, the names of certified DUI Alcohol or Drug Use Risk
- Reduction Programs. Any state supervision officer violating this paragraph shall be
- guilty of a misdemeanor.
- 84 (c) Except as provided by subsection (d) of this Code section, a state supervision officer
- shall not be required to resign from employment by the division if he or she becomes a
- 86 candidate for a public office of a county, school district, or municipality which does not
- 87 require full-time service or accepts appointment to such an office.
- 88 (d) A state supervision officer shall be required to resign from employment by the division
- if he or she becomes a candidate for the General Assembly or becomes a candidate for or
- accepts appointment to a public office which requires full-time service.

91 <u>42-9A-5.</u>

(a) In order for a person to be a state supervision officer, he or she shall be at least 21 years of age at the time of appointment and have completed a standard two-year college course. The qualifications provided in this Code section shall be the minimum qualifications and the department is authorized to prescribe such additional and higher educational qualifications from time to time as it deems desirable, but not to exceed a four-year standard college course. (b) Each state supervision officer shall give bond in such amount as may be fixed by the department payable to the department for the use of the person or persons damaged by his

(b) Each state supervision officer shall give bond in such amount as may be fixed by the department payable to the department for the use of the person or persons damaged by his or her misfeasance or malfeasance and conditioned on the faithful performance of his or her duties. The cost of the bond shall be paid by the department; provided, however, that the bond may be procured, either by the department or by the Department of Administrative Services, under a master policy or on a group blanket coverage basis, where only the number of positions in each judicial circuit and the amount of coverage for each position are listed in a schedule attached to the bond; and in such case each individual shall be fully bonded and bound as principal, together with the surety, by virtue of his or her holding the position or performing the duties of state supervision officer in the circuit or circuits, and his or her individual signature shall not be necessary for such bond to be valid in accordance with all the laws of this state. The bond or bonds shall be made payable to the department.

111 <u>42-9A-6.</u>

(a) A state supervision officer leaving the service of the division under honorable conditions who has accumulated 20 or more years of service with the division or its predecessor department or agency, as applicable, as a state supervision officer shall be entitled as part of such employee's compensation to retain his or her division issued badge. A state supervision officer employed with the division who is killed in the line of duty shall be entitled to have his or her division issued badge given to a surviving family member. Where a state supervision officer leaves the service of the division due to a disability that arose in the line of duty and such disability prevents the state supervision officer from further serving as a peace officer, then such disabled state supervision officer shall be entitled to retain his or her division issued badge regardless of the state supervision officer's number of years of service with the division or its predecessor department or agency, as applicable. The department shall be authorized to promulgate rules and regulations for the implementation of this Code section.

(b) Any certified parole officer who was entitled to keep his or her badge under the former

provisions of subsection (b) of Code Section 42-9-9 shall be entitled to keep his or her

badge if he or she meets the requirements of such former Code section and was employed
 by the board on June 30, 2010.

- 129 <u>42-9A-7.</u>
- (a) No state supervision officer shall collect or disburse any funds whatsoever, except by
- written order of the court or the board. It shall be the duty of such state supervision officer
- to transmit a copy of such order to the department not later than 15 days after it has been
- issued by the court or the board. No state supervision officer shall be directed to collect
- any funds other than funds directed to be paid as the result of a criminal proceeding or as
- ordered by the board. Every state supervision officer who collects or disburses any funds
- whatsoever shall faithfully keep the records of accounts as are required by the department,
- which records shall be subject to inspection by the department or the board at any time.
- 138 <u>In every instance where a bank account is required, it shall be kept in the name of the 'State</u>
- Probation Office' or 'State Parole Office,' as applicable.
- (b) State supervision officers shall aid parolees and probationers in securing employment.
- 141 <u>42-9A-8.</u>
- 142 (a) The department shall make periodic audits of each state supervision officer who, by
- virtue of his or her duties, has any moneys, fines, court costs, property, or other funds
- coming into his or her control or possession or being disbursed by him or her. The
- department shall keep a permanent record of the audit of each state supervision officer's
- accounts on file. It shall be the duty of the employee of the department conducting the
- audit to notify the department and the board in writing of any discrepancy of an illegal
- nature that might result in prosecution. The department shall have the right to interview
- and make inquiry of certain selected payors or recipients of funds, as it may choose,
- without notifying the state supervision officer, to carry out the purposes of the audit. The
- employee who conducts the audit shall be required to give bond in such amount as may be
- set by the department, in the same manner and for the same purposes as provided under
- Code Section 42-9A-5 for the bonds of state supervision officers. The bond shall bind the
- employee and his or her surety in the performance of the employee's duties.
- (b) Any overpayment of fines, restitutions, or other moneys owed as a condition of
- probation or parole shall not be refunded to the payor if the amount of such overpayment
- is less than \$5.00.

- 159 <u>42-9A-9.</u>
- (a) On July 1, 2010, the department shall receive custody of the state owned real property
- in the custody of the board on June 30, 2010, which pertains to the functions transferred
- to the department relative to parole supervision.
- 163 (b) The rights, privileges, entitlements, and duties of parties to contracts, leases,
- agreements, and other transactions entered into before July 1, 2010, by the board which
- relate to the supervisory functions transferred to the department shall continue to exist; and
- none of these rights, privileges, entitlements, and duties is impaired or diminished by
- reason of the transfer of the functions to the department. In all such instances, the
- department shall be substituted for the board, and the department shall succeed to the rights
- and duties under such contracts, leases, agreements, and other transactions.
- (c) All persons employed by the board in capacities which relate to the supervisory
- functions transferred to the department on June 30, 2010, shall, on July 1, 2010, become
- employees of the department in similar capacities, as determined by the commissioner of
- the department. Such employees shall be subject to the employment practices and policies
- of the department on and after July 1, 2010, but the compensation and benefits of such
- transferred employees shall not be reduced solely as a result of such transfer. Employees
- who are subject to the rules of the State Personnel Board and thereby under the State
- 177 Personnel Administration and who are transferred to the department shall retain all existing
- 178 rights under the State Personnel Administration. Accrued leave possessed by such
- employees on June 30, 2010, shall be retained by such employees as employees of the
- department.
- 181 <u>42-9A-10.</u>
- (a) Any provisions of law to the contrary notwithstanding, any person employed by the
- department as a probation officer on June 30, 2010, shall continue in such position but shall
- be administratively assigned to the division to serve as a state supervision officer; provided,
- however, that on July 1, 2012, such person shall become permanently employed by the
- division as a state supervision officer.
- (b) Any provisions of law to the contrary notwithstanding, any person employed by the
- State Board of Pardons and Paroles as a parole officer on June 30, 2010, shall continue in
- such position but shall be administratively assigned to the division to serve as a state
- supervision officer; provided, however, that on July 1, 2012, such person shall become
- permanently employed by the division as a state supervision officer.
- (c) This Code section shall be automatically repealed on July 1, 2010, if an Act becomes
- 193 <u>law on such date amending Title 47 so as to preserve the specific retirement benefits</u>
- allowed for probation officers and parole officers.

195 <u>ARTICLE 2</u>

196 42-9A-20.

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For purposes of probation supervision, the department may assign one state supervision officer to each judicial circuit in this state or, for purposes of assignment, may consolidate two or more judicial circuits and assign one state supervision officer thereto. In the event the department determines that more than one state supervision officer is needed for a particular circuit, additional state supervision officers may be assigned to the circuit. The department shall be authorized to direct any state supervision officer to assist any other state supervision officer wherever assigned. In the event that more than one state supervision officer is assigned to the same office or to the same court division within a particular judicial circuit, the department shall designate one of the state supervision officers to be the chief state supervision officer. State supervision officers shall be assigned among the respective judicial circuits based generally on the relative number of persons on probation in each circuit. State supervision officers shall supervise and counsel probationers in the judicial circuit to which they are assigned. Each state supervision officer shall perform the duties prescribed in this chapter and such duties as are prescribed by the department and shall keep such records and files and make such reports as are required of him or her.

213 <u>42-9A-21.</u>

With respect to probation cases, it shall be the duty of a state supervision officer to investigate all cases referred to him or her by the court and to make findings and report thereon in writing to the court with his or her recommendation. The superior court may require, before imposition of sentence, a presentence investigation and written report in each felony case in which the accused has entered a plea of guilty or nolo contendere or has been convicted. The state supervision officer shall cause to be delivered to each probationer under his or her supervision a certified copy of the terms of probation and any change or modification thereof and shall cause such probationer to be instructed regarding the same. The state supervision officer shall keep informed concerning the conduct, habits, associates, employment, recreation, and whereabouts of the probationer by visits, by requiring reports, or in other ways. The state supervision officer shall make such reports in writing or otherwise as the court may require. The state supervision officer shall use all practicable and proper methods to aid and encourage probationers and to bring about improvements in their conduct and condition. The state supervision officer shall keep records on each probationer referred to him or her.

229	<u>42-9A-22.</u>
230	(a) When a convicted person is committed to an institution under the jurisdiction of the
231	department, any presentence investigation or psychological evaluation compiled by a state
232	supervision officer shall be forwarded to any office designated by the commissioner.
233	Accompanying this document or evaluation will be the case history form and the criminal
234	history sheets from the Federal Bureau of Investigation or the Georgia Crime Information
235	Center, if available, unless any such information has previously been sent to the department
236	pursuant to Code Section 42-5-50. A copy of these same documents shall be made
237	available to the board. A copy of one or more of these documents, based on need, may be
238	forwarded to another institution to which the convicted person may be committed.
239	(b) The prison or institution receiving the documents referenced in subsection (a) of this
240	Code section shall maintain the confidentiality of the documents and the information
241	contained therein and shall not send them or release them or reveal them to any other
242	person, institution, or agency without the express consent of the probation unit which
243	originated or accumulated the documents.
244	<u>42-9A-23.</u>
245	In any county where the chief judge of the superior court, state court, municipal court,
246	probate court, or magistrate court has provided for probation services for such court
247	through agreement with a private corporation, enterprise, or agency or has established a
248	county or municipal probation system for such court pursuant to Code Section 42-8-100,
249	the provisions of this chapter relating to probation supervision services shall not apply to
250	defendants sentenced in any such court.
251	<u>42-9A-24.</u>
252	The department may provide office space and clerical help for the division wherever
253	needed. The counties of this state shall cooperate in this respect and, wherever possible,
254	shall furnish office space if needed.
255	ARTICLE 3
256	<u>42-9A-30.</u>
257	(a) For purposes of parole supervision, state supervision officers shall have the function
258	and responsibility of supervising all parolees or conditional releasees by the board. State
259	supervision officers shall have the responsibility of notifying the board of any alleged
260	violation of the conditions of parole or conditional release and making such investigations
261	as may be necessary with reference to such violations. Any state supervision officer, when

he or she has reasonable ground to believe that a parolee or conditional releasee has violated the terms or conditions of his or her parole or conditional release in a material respect, shall notify the board or some member thereof; and proceedings shall thereupon be had as provided in Code Sections 42-9-48, 42-9-50, and 42-9-51.

(b) State supervision officers shall be assigned among the respective judicial circuits based generally on the relative number of persons on parole in each circuit.

(c) The amount of the monthly parole supervision fee that the board may require the payment of as a condition of parole or conditional release shall be set by rule of the board and shall be uniform state wide. Such fees shall be collected by the state supervision officers to be paid into the general fund of the state treasury.

42-9A-31.

The department shall be authorized to maintain and operate or to enter into memoranda of agreement or other written documents evidencing contracts with other state agencies, persons, or any other entities for transitional or intermediate or other services or for programs deemed by the board to be necessary for parolees or conditional releasees from imprisonment by order of the board."

278 PART II

BOARD OF CORRECTIONS

SECTION 2-1.

Said Title 42 is further amended by revising subsection (a) of Code Section 42-2-2, relating to members of the Board of Corrections, as follows:

"(a) On and after July 1, 1983, the The board shall consist of one member from each congressional district in the state, the chairman of the State Board of Pardons and Paroles, and five additional members from the state at large. All members, except the chairman of the State Board of Pardons and Paroles, shall be appointed by the Governor, subject to confirmation by the Senate. The initial terms of members shall be as follows: two members representative of congressional districts and one at-large member shall be appointed for a term ending July 1, 1984; two members representative of congressional districts and one at-large member shall be appointed for a term ending July 1, 1985; two members representative of congressional districts and one at-large member shall be appointed for a term ending July 1, 1986, two members representative of congressional districts and one at-large member shall be appointed for a term ending July 1, 1987; and two members representative of congressional districts and one at-large member shall be appointed for a term ending July 1, 1987; and two members representative of congressional districts and one at-large member shall be appointed for a term ending July 1, 1988. Thereafter, all All members appointed to the

board by the Governor shall be appointed for terms of five years and until their successors are appointed and qualified. In the event of a vacancy during the term of any member by reason of death, resignation, or otherwise, the appointment of a successor by the Governor shall be for the remainder of the unexpired term of such member. The chairman of the State Board of Pardons and Paroles shall serve on the board during his or her year as chairman of the State Board of Pardons and such post on the board shall rotate as the chairman rotates serving as chairman, but such post shall always be actively filled by the chairman of the State Board of Pardons and Paroles."

304 PART III

305 "STATE-WIDE PROBATION ACT"

306 **SECTION 3-1.**

- 307 Said Title 42 is further amended by revising Article 2 of Chapter 8, relating to creating the state-wide probation system, as follows:
- 309 "ARTICLE 2
- 310 42-8-20.

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- This article shall be known and may be cited as the 'State-wide Probation Act.'
- 312 42-8-21.
- 313 As used in this article, the term:
- (1) 'Board' means the Board of Corrections.
- 315 (2) 'Commissioner' means the commissioner of corrections.
- 316 (3) 'Department' means the Department of Corrections.
- 317 42-8-22.
- 318 There is created a state-wide probation system for felony offenders to be administered by
- 319 <u>the Division of State Supervision of the Department of Corrections.</u> The probation system
- shall not be administered as part of the duties and activities of the State Board of Pardons
- and Paroles. Separate files and records shall be kept with relation to the state-wide
- 322 probation system.

323 42-8-23.

The <u>Division of State Supervision of the</u> department shall administer the supervision of felony probationers. Nothing in this Code section shall alter the relationship between judges and <u>probation supervisors</u> state supervision officers prescribed in this article.

327 42-8-24.

It shall be the duty of the department to supervise and direct the work of the probation supervisors provided for in Code Section 42-8-25 and to keep accurate files and records on all probation cases and persons on probation. It shall be the duty of the board to promulgate rules and regulations necessary to effectuate the purposes of this chapter Reserved.

333 42-8-25.

The department shall employ probation supervisors. The department may assign one supervisor to each judicial circuit in this state or, for purposes of assignment, may consolidate two or more judicial circuits and assign one supervisor thereto. In the event the department determines that more than one supervisor is needed for a particular circuit, an additional supervisor or additional supervisors may be assigned to the circuit. The department is authorized to direct any probation supervisor to assist any other probation supervisor wherever assigned. In the event that more than one supervisor is assigned to the same office or to the same division within a particular judicial circuit, the department shall designate one of the supervisors to be in charge Reserved.

343 42-8-26.

(a) In order for a person to hold the office of probation supervisor, he must be at least 21 years of age at the time of appointment and must have completed a standard two-year college course, provided that any person who is employed as a probation supervisor on or before July 1, 1972, shall not be required to meet the educational requirements specified in this Code section, nor shall he be prejudiced in any way for not possessing the requirements. The qualifications provided in this Code section are the minimum qualifications and the department is authorized to prescribe such additional and higher educational qualifications from time to time as it deems desirable, but not to exceed a four-year standard college course.

(b) The compensation of the probation supervisors shall be set by the State Personnel Board and the State Personnel Administration. Probation supervisors shall also be allowed travel and other expenses as are other state employees.

356 (c)(1) No supervisor shall engage in any other employment, business, or activities which 357 interfere or conflict with his or her duties and responsibilities as probation supervisor. 358 (2) No supervisor shall own, operate, have any financial interest in, be an instructor at, 359 or be employed by any private entity which provides drug or alcohol education services 360 or offers a DUI Alcohol or Drug Use Risk Reduction Program certified by the 361 Department of Driver Services. 362 (3) No supervisor shall specify, directly or indirectly, a particular DUI Alcohol or Drug 363 Use Risk Reduction Program which a probationer may or shall attend. This paragraph 364 shall not prohibit any supervisor from furnishing any probationer, upon request, the 365 names of certified DUI Alcohol or Drug Use Risk Reduction Programs. Any supervisor violating this paragraph shall be guilty of a misdemeanor. 366 367 (d) Each probation supervisor shall give bond in such amount as may be fixed by the department payable to the department for the use of the person or persons damaged by his 368 misfeasance or malfeasance and conditioned on the faithful performance of his duties. The 369 370 cost of the bond shall be paid by the department; provided, however, that the bond may be procured, either by the department or by the Department of Administrative Services, under 371 a master policy or on a group blanket coverage basis, where only the number of positions 372 373 in each judicial circuit and the amount of coverage for each position are listed in a schedule 374 attached to the bond; and in such case each individual shall be fully bonded and bound as 375 principal, together with the surety, by virtue of his holding the position or performing the 376 duties of probation supervisor in the circuit or circuits, and his individual signature shall 377 not be necessary for such bond to be valid in accordance with all the laws of this state. The 378 bond or bonds shall be made payable to the department Reserved. 379 42-8-27. 380 The probation supervisor shall supervise and counsel probationers in the judicial circuit to 381 which he is assigned. Each supervisor shall perform the duties prescribed in this chapter 382 and such duties as are prescribed by the department and shall keep such records and files 383 and make such reports as are required of him Reserved. 384 42-8-28. 385 Probation supervisors shall be assigned among the respective judicial circuits based 386 generally on the relative number of persons on probation in each circuit Reserved.

387 42-8-29.

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It shall be the duty of the probation supervisor to investigate all cases referred to him by the court and to make his findings and report thereon in writing to the court with his

recommendation. The superior court may require, before imposition of sentence, a presentence investigation and written report in each felony case in which the defendant has entered a plea of guilty or nolo contendere or has been convicted. The probation supervisor shall cause to be delivered to each person placed on probation under his supervision a certified copy of the terms of probation and any change or modification thereof and shall cause the person to be instructed regarding the same. He shall keep informed concerning the conduct, habits, associates, employment, recreation, and whereabouts of the probationer by visits, by requiring reports, or in other ways. He shall make such reports in writing or otherwise as the court may require. He shall use all practicable and proper methods to aid and encourage persons on probation and to bring about improvements in their conduct and condition. He shall keep records on each probationer referred to him Reserved.

401 42-8-29.1.

- (a) When a convicted person is committed to an institution under the jurisdiction of the department, any presentence or post-sentence investigation or psychological evaluation compiled by a probation supervisor or other probation official shall be forwarded to any division or office designated by the commissioner. Accompanying this document or evaluation will be the case history form and the criminal history sheets from the Federal Bureau of Investigation or the Georgia Crime Information Center, if available, unless any such information has previously been sent to the department pursuant to Code Section 42-5-50. A copy of these same documents shall be made available for the State Board of Pardons and Paroles. A copy of one or more of these documents, based on need, may be forwarded to another institution to which the defendant may be committed.
- 412 (b) The prison or institution receiving these documents shall maintain the confidentiality
 413 of the documents and the information contained therein and shall not send them or release
 414 them or reveal them to any other person, institution, or agency without the express consent
 415 of the probation unit which originated or accumulated the documents.
- 416 42-8-30.
- In the counties where no juvenile probation system exists, juvenile offenders, upon direction of the court, shall be supervised by probation supervisors. Other than in this respect, nothing in this article shall be construed to change or modify any law relative to probation as administered by any juvenile court in this state Reserved.
- 421 42-8-30.1.
- 422 In any county where the chief judge of the superior court, state court, municipal court, 423 probate court, or magistrate court has provided for probation services for such court

through agreement with a private corporation, enterprise, or agency or has established a county or municipal probation system for such court pursuant to Code Section 42-8-100, the provisions of this article relating to probation supervision services shall not apply to defendants sentenced in any such court.

428 42-8-31.

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- No probation supervisor shall collect or disburse any funds whatsoever, except by written
 order of the court; and it shall be the duty of the supervisor to transmit a copy of the order
 to the department not later than 15 days after it has been issued by the court. Every
 supervisor who collects or disburses any funds whatsoever shall faithfully keep the records
 of accounts as are required by the department, which records shall be subject to inspection
 by the department at any time. In every instance where a bank account is required, it shall
 be kept in the name of the 'State Probation Office.' Reserved.
- 436 42-8-32.
- No probation supervisor shall be directed to collect any funds other than funds directed to
- be paid as the result of a criminal proceeding Reserved.
- 439 42-8-33.
- (a) The department shall make periodic audits of each probation supervisor who, by virtue 440 441 of his duties, has any moneys, fines, court costs, property, or other funds coming into his 442 control or possession or being disbursed by him. The department shall keep a permanent 443 record of the audit of each probation supervisor's accounts on file. It shall be the duty of 444 the employee of the department conducting the audit to notify the department in writing of 445 any discrepancy of an illegal nature that might result in prosecution. The department shall 446 have the right to interview and make inquiry of certain selected payors or recipients of 447 funds, as it may choose, without notifying the probation supervisor, to carry out the 448 purposes of the audit. The employee who conducts the audit shall be required to give bond 449 in such amount as may be set by the department, in the same manner and for the same 450 purposes as provided under Code Section 42-8-26 for the bonds of probation supervisors.
- 451 The bond shall bind the employee and his surety in the performance of his duties.
- 452 (b) Any overpayment of fines, restitutions, or other moneys owed as a condition of probation shall not be refunded to the probationer if the amount of such overpayment is less
- 454 than \$5.00.

455 42-8-34.

(a) Any court of this state which has original jurisdiction of criminal actions, except juvenile courts, municipal courts, and probate courts, in which the defendant in a criminal case has been found guilty upon verdict or plea or has been sentenced upon a plea of nolo contendere, except for an offense punishable by death or life imprisonment, may, at a time to be determined by the court, hear and determine the question of the probation of such defendant.

(b) Prior to the hearing, the court may refer the case to the probation supervisor state supervision officer of the circuit in which the court is located for investigation and recommendation. The court, upon such reference, shall direct the supervisor state supervision officer to make an investigation and to report to the court, in writing at a specified time, upon the circumstances of the offense and the criminal record, social history, and present condition of the defendant, together with the supervisor's state supervision officer's recommendation; and it shall be the duty of the supervisor state supervision officer to carry out the directive of the court.

(c) Subject to the provisions of subsection (a) of Code Section 17-10-1 and subsection (f) of Code Section 17-10-3, if it appears to the court upon a hearing of the matter that the defendant is not likely to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court in its discretion shall impose sentence upon the defendant but may stay and suspend the execution of the sentence or any portion thereof or may place him or her on probation under the supervision and control of the probation supervisor state supervision officer for the duration of such probation. The period of probation or suspension shall not exceed the maximum sentence of confinement which could be imposed on the defendant.

(d)(1) In every case that a court of this state or any other state sentences a defendant to probation or any pretrial release or diversion program under the supervision of the department, in addition to any fine or order of restitution imposed by the court, there shall be imposed a probation fee as a condition of probation, release, or diversion in the amount equivalent to \$23.00 per each month under supervision, and in addition, a one-time fee of \$50.00 where such defendant was convicted of any felony. The probation fee may be waived or amended after administrative process by the department and approval of the court, or upon determination by the court, as to the undue hardship, inability to pay, or any other extenuating factors which prohibit collection of the fee; provided, however, that the imposition of sanctions for failure to pay fees shall be within the discretion of the court through judicial process or hearings. Probation fees shall be waived on probationers incarcerated or detained in a departmental or other confinement

facility which prohibits employment for wages. All probation fees collected by the department shall be paid into the general fund of the state treasury, except as provided in subsection (f) of Code Section 17-15-13, relating to sums to be paid into the Georgia Crime Victims Emergency Fund. Any fees collected by the court under this paragraph shall be remitted not later than the last day of the month after such fee is collected to the Georgia Superior Court Clerks' Cooperative Authority for deposit into the general fund of the state treasury.

- (2) In addition to any other provision of law, any person convicted of a violation of Code Section 40-6-391 or subsection (b) of Code Section 16-13-2 who is sentenced to probation or a suspended sentence by a municipal, magistrate, probate, recorder's, mayor's, state, or superior court shall also be required by the court to pay a one-time fee of \$25.00. The clerk of court, or if there is no clerk the person designated to collect fines, fees, and forfeitures for such court, shall collect such fee and remit the same not later than the last day of the month after such fee is collected to the Georgia Superior Court Clerks' Cooperative Authority for deposit into the general fund of the state treasury.
- (3) In addition to any fine, fee, restitution, or other amount ordered, the sentencing court may also impose as a condition of probation for felony criminal defendants sentenced to a day reporting center an additional charge, not to exceed \$10.00 per day for each day such defendant is required to report to a day reporting center; provided, however, that no fee shall be imposed or collected if the defendant is unemployed or has been found indigent by the sentencing court. The charges required by this paragraph shall be paid by the probationer directly to the department. Funds collected by the department pursuant to this subsection paragraph shall only be used by the department in the maintenance and operation of the day reporting center program.
- 516 (e) The court may, in its discretion, require the payment of a fine or costs, or both, as a condition precedent to probation.
 - (f) During the interval between the conviction or plea and the hearing to determine the question of probation, the court may, in its discretion, either order the confinement of the defendant without bond or may permit his the defendant's release on bond, which bond shall be conditioned on his the defendant's appearance at the hearing and shall be subject to the same rules as govern appearance bonds. Any time served in confinement shall be considered a part of the sentence of the defendant.
 - (g) The sentencing judge shall not lose jurisdiction over any person placed on probation during the term of the person's probated sentence. The judge is empowered to revoke any or all of the probated sentence, rescind any or all of the sentence, or, in any manner deemed advisable by the judge, modify or change the probated sentence, including ordering the

probationer into the sentencing options system, as provided in Article 9 of this chapter, at any time during the period of time prescribed for the probated sentence to run.

- (h) Notwithstanding any provision of this Code or any rule or regulation to the contrary,
- if a defendant is placed on probation in a county of a judicial circuit other than the one in
- which he or she resides for committing any misdemeanor offense, such defendant
- probationer may, when specifically ordered by the court, have his or her probation
- supervision transferred to the judicial circuit of the county in which he the probationer
- resides.
- 536 42-8-34.1.
- 537 (a) For the purposes of this Code section, the term 'special condition of probation or
- suspension of the sentence' means a condition of a probated or suspended sentence which:
- (1) Is expressly imposed as part of the sentence in addition to general conditions of
- probation and court ordered fines and fees; and
- 541 (2) Is identified in writing in the sentence as a condition the violation of which authorizes
- the court to revoke the probation or suspension and require the defendant to serve up to
- the balance of the sentence in confinement.
- (b) A court may not revoke any part of any probated or suspended sentence unless the
- defendant admits the violation as alleged or unless the evidence produced at the revocation
- hearing establishes by a preponderance of the evidence the violation or violations alleged.
- (c) At any revocation hearing, upon proof that the defendant has violated any general
- provision of probation or suspension other than by commission of a new felony offense,
- 549 the court shall consider the use of alternatives to include community service, intensive
- probation, diversion centers, probation detention centers, special alternative incarceration,
- or any other alternative to confinement deemed appropriate by the court or as provided by
- the state or county. In the event the court determines that the defendant does not meet the
- criteria for said alternatives, the court may revoke the balance of probation or not more
- than two years in confinement, whichever is less.
- (d) If the violation of probation or suspension alleged and proven by a preponderance of
- the evidence or the defendant's admission is the commission of a felony offense, the court
- may revoke no more than the lesser of the balance of probation or the maximum time of
- 558 the sentence authorized to be imposed for the crime constituting the violation of the
- probation.
- (e) If the violation of probation or suspension alleged and proven by a preponderance of
- the evidence or the defendant's admission is the violation of a special condition of
- probation or suspension of the sentence, the court may revoke the probation or suspension

of the sentence and require the defendant to serve the balance or portion of the balance of the original sentence in confinement.

- (f) The payment of restitution or reparation, costs, or fines ordered by the court may be payable in one lump sum or in periodic payments, as determined by the court after consideration of all the facts and circumstances of the case and of the defendant's ability to pay. Such payments shall, in the discretion of the sentencing judge, be made either to the clerk of the sentencing court or, if the sentencing court is a probate court, state court, or superior court, to the probation state supervision office serving said court.
- 571 (g) In no event shall an offender a probationer be supervised on probation for more than
 572 a total of two years for any one offense or series of offenses arising out of the same
 573 transaction, whether before or after confinement, except as provided by paragraph (2) of
 574 subsection (a) of Code Section 17-10-1.
- 575 42-8-34.2.

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- 576 (a) In the event that a defendant probationer is delinquent in the payment of fines, costs, 577 or restitution or reparation, as was ordered by the court as a condition of probation, the 578 defendant's probation probationer's state supervision officer is shall be authorized, but shall 579 not be required, to execute a sworn affidavit wherein the amount of arrearage is set out. 580 In addition, the affidavit shall contain a succinct statement as to what efforts the department 581 has made in trying to collect the delinquent amount. The affidavit shall then be submitted 582 to the sentencing court for approval. Upon signature and approval of the court, said arrearage shall then be collectable through issuance of a writ of fieri facias by the clerk of 583 the sentencing court; and the department may enforce such collection through any judicial 584 585 or other process or procedure which may be used by the holder of a writ of execution 586 arising from a civil action.
 - (b) This Code section provides the state with remedies in addition to all other remedies provided for by law; and nothing in this Code section shall preclude the use of any other or additional remedy in any case.
 - (c) No clerk of any court shall be authorized to require any deposit of cost or any other filing or service fee as a condition to the filing of a garnishment action or other action or proceeding authorized under this Code section. In any such action or proceeding, however, the clerk of the court in which the action is filed shall deduct and retain all proper court costs from any funds paid into the treasury of the court, prior to any other disbursement of such funds so paid into court.

- 596 42-8-35.
- 597 (a) The court shall determine the terms and conditions of probation and may provide that
- the probationer shall:
- (1) Avoid injurious and vicious habits;
- 600 (2) Avoid persons or places of disreputable or harmful character;
- (3) Report to the probation supervisor state supervision officer as directed;
- 602 (4) Permit the supervisor state supervision officer to visit the probationer at the
- probationer's home or elsewhere;
- (5) Work faithfully at suitable employment insofar as may be possible;
- 605 (6) Remain within a specified location; provided, however, that the court shall not banish
- a probationer to any area within the state:
- (A) That does not consist of at least one entire judicial circuit as described by Code
- 608 Section 15-6-1; or
- (B) In which any service or program in which the probationer must participate as a
- 610 condition of probation is not available;
- (7) Make reparation or restitution to any aggrieved person for the damage or loss caused
- by the probationer's offense, in an amount to be determined by the court. Unless
- otherwise provided by law, no reparation or restitution to any aggrieved person for the
- damage or loss caused by the probationer's offense shall be made if the amount is in
- dispute unless the same has been adjudicated;
- (8) Make reparation or restitution as reimbursement to a municipality or county for the
- payment for medical care furnished the person while incarcerated pursuant to the
- provisions of Article 3 of Chapter 4 of this title. No reparation or restitution to a local
- governmental unit for the provision of medical care shall be made if the amount is in
- dispute unless the same has been adjudicated;
- 621 (9) Repay the costs incurred by any municipality or county for wrongful actions by an
- inmate covered under the provisions of paragraph (1) of subsection (a) of Code Section
- 623 42-4-71;
- 624 (10) Support the probationer's legal dependents to the best of the probationer's ability;
- (11) Violate no local, state, or federal laws and be of general good behavior;
- 626 (12) If permitted to move or travel to another state, agree to waive extradition from any
- jurisdiction where the probationer may be found and not contest any effort by any
- jurisdiction to return the probationer to this state; and
- 629 (13) Submit to evaluations and testing relating to rehabilitation and participate in and
- successfully complete rehabilitative programming as directed by the department.
- (b) In determining the terms and conditions of probation for a probationer who has been
- convicted of a criminal offense against a victim who is a minor or dangerous sexual offense

as those terms are defined in Code Section 42-1-12, the court may provide that the probationer shall be:

- 635 (1) Prohibited from entering or remaining present at a victim's school, place of 636 employment, place of residence, or other specified place at times when a victim is present 637 or from loitering in areas where minors congregate, child care facilities, churches, or
- schools as those terms are defined in Code Section 42-1-12;
- (2) Required to wear a device capable of tracking the location of the probationer by
- means including electronic surveillance or global positioning systems. The department
- shall assess and collect fees from the probationer for such monitoring at levels set by
- regulation by the department;
- 643 (3) Required, either in person or through remote monitoring, to allow viewing and
- recording of the probationer's incoming and outgoing e-mail, history of websites visited
- and content accessed, and other Internet based communication;
- 646 (4) Required to have periodic unannounced inspections of the contents of the
- probationer's computer or any other device with Internet access including the retrieval
- and copying of all data from the computer or device and any internal or external storage
- or portable media and the removal of such information, computer, device, or medium;
- 650 and
- (5) Prohibited from seeking election to a local board of education.
- 652 (c) The supervision provided for under subsection (b) of this Code section shall be
- 653 conducted by a probation state supervision officer, law enforcement officer, or computer
- 654 information technology specialist working under the supervision of a probation state
- 655 <u>supervision</u> officer or law enforcement agency.
- 656 42-8-35.1.
- 657 (a) In addition to any other terms or conditions of probation provided for under this
- chapter, the trial judge may provide that probationers sentenced for felony offenses
- 659 committed on or after July 1, 1993, to a period of time of not less than one year on
- probation as a condition of probation must satisfactorily complete a program of
- 661 confinement in a 'special alternative incarceration—probation boot camp' unit of the
- department for a period of 120 days computed from the time of initial confinement in the
- unit; provided, however, the department may release the defendant upon service of 90 days
- in recognition of excellent behavior.
- (b) Before a court can place this condition upon the sentence, an initial investigation will
- shall be completed by the probation officer state supervision officer which will indicate that
- the probationer is qualified for such treatment in that the individual probationer does not
- appear to be physically or mentally disabled in a way that would prevent him or her from

strenuous physical activity, that the individual probationer has no obvious contagious diseases, that the individual probationer is not less than 17 years of age nor more than 30 years of age at the time of sentencing, and that the department has granted provisional approval of the placement of the individual probationer in the 'special alternative incarceration—probation boot camp' unit.

- (c) In every case where an individual a probationer is sentenced under the terms of this Code section, the sentencing court shall, within its probation order, direct the department to arrange with the sheriff's office in the county of incarceration to have the individual probationer delivered to a designated unit of the department within a specific date not more than 15 days after the issuance of such probation order by the court.
- (d) At any time during the individual's probationer's confinement in the unit, but at least five days prior to his <u>or her</u> expected date of release, the department will shall certify to the trial court as to whether the individual probationer has satisfactorily completed this condition of probation.
 - (e) Upon the receipt of a satisfactory report of performance in the program from the department, the trial court shall release the <u>individual probationer</u> from confinement in the 'special alternative incarceration—probation boot camp' unit. However; provided, <u>however</u>, that the receipt of an unsatisfactory report will be grounds for revocation of the probated sentence as would any other violation of a condition or term of probation.
 - (f) The satisfactory report of performance in the program from the department shall, in addition to the other requirements specified in this Code section, require participation of the individual probationer confined in the unit in such adult education courses necessary to attain the equivalency of a grade five competency level as established by the State Board of Education for elementary schools. Those individuals who are mentally disabled as determined by initial testing are shall be exempt from mandatory participation. After the individual probationer is released from the unit, it shall be a special condition of probation that the individual probationer participate in an education program in the community until grade five level competency is achieved or active probation supervision terminates. It shall be the duty of the department to certify to the trial court that such individual probationer has satisfactorily completed this condition of probation while on active probation supervision. The receipt of an unsatisfactory report may be grounds for revocation of the probated sentence as would any other violation of a condition or term of probation. Under certain circumstances, the probationer may be exempt from this requirement if it is determined by the probation state supervision officer that community education resources are inaccessible to the probationer.

- 704 42-8-35.2.
- 705 (a) Notwithstanding any other provisions of law, the court, when imposing a sentence of
- 706 imprisonment after a conviction of a violation of subsection (b) or (d) of Code Section
- 707 16-13-30 or after a conviction of a violation of Code Section 16-13-31, shall impose a
- special term of probation of three years in addition to such term of imprisonment; provided,
- however, upon a second or subsequent conviction of a violation of the provisions of such
- Code sections as stated in this subsection, the special term of probation shall be six years
- 711 in addition to any term of imprisonment.
- 712 (b) A special term of probation imposed under this Code section may be revoked if the
- terms and conditions of probation are violated. In such circumstances the original term of
- 714 imprisonment shall be increased by the period of the special term of probation and the
- resulting new term of imprisonment shall not be diminished by the time which was spent
- on special probation. A person whose special term of probation has been revoked may be
- required to serve all or part of the remainder of the new term of imprisonment. A special
- term of probation provided for in this Code section shall be in addition to, and not in lieu
- of, any other probation provided for by law and shall be supervised in the same manner as
- other probations as provided in this chapter.
- 721 (c) Upon written application by the probationer to the trial court, the court may, in its
- discretion, suspend the balance of any special term of probation, provided that at least
- one-half of said special term of probation has been completed and all fines associated with
- the original sentence have been paid and all other terms of the original sentence and the
- terms of the special probation have been met by the probationer.
- 726 42-8-35.3.
- Notwithstanding any other terms or conditions of probation which may be imposed, a court
- sentencing a defendant to probation for a violation of Code Section 16-5-90 or 16-5-91
- may impose one or more of the following conditions on such probation:
- 730 (1) Prohibit the <u>defendant probationer</u> from engaging in conduct in violation of Code
- 731 Section 16-5-90 or 16-5-91;
- 732 (2) Require the defendant probationer to undergo a mental health evaluation and, if it is
- determined by the court from the results of such evaluation that the defendant probationer
- is in need of treatment or counseling, require the defendant probationer to undergo mental
- health treatment or counseling by a court approved mental health professional, mental
- health facility, or facility of the Department of Behavioral Health and Developmental
- Disabilities. Unless the defendant probationer is indigent, the cost of any such treatment
- shall be borne by the defendant probationer; or

(3) Prohibit the <u>defendant probationer</u> from entering or remaining present at the victim's school, place of employment, or other specified places at times when the victim is present.

742 42-8-35.4.

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- (a) In addition to any other terms and conditions of probation provided for in this article,
- the trial judge may require that a defendant convicted of a felony and sentenced to a period
- of not less than one year on probation or a defendant who has been previously sentenced
- to probation for a forcible misdemeanor as defined in paragraph (7) of Code Section 16-1-3
- or a misdemeanor of a high and aggravated nature and has violated probation or other
- probation alternatives and is subsequently sentenced to a period of not less than one year
- on probation shall complete satisfactorily, as a condition of that probation, a program of
- confinement in a probation detention center. Probationers so sentenced will shall be
- required to serve the period of confinement specified in the court order.
- 752 (b) The court shall determine that the defendant is at least 17 years of age at the time of
- sentencing.
- 754 (c) During the period of confinement, the department may transfer the probationer to other
- facilities in order to provide needed physical and mental health care or for other reasons
- essential to the care and supervision of the probationer or as necessary for the effective
- administration and management of its facilities.
- 758 42-8-35.5.
- 759 (a) In addition to any other terms and conditions of probation provided in this article, the
- trial judge may require that probationers sentenced to a period of not less than one year on
- probation shall satisfactorily complete, as a condition of that probation, a program in a
- probation diversion center. Probationers so sentenced will shall be required to serve a
- period of confinement as specified in the court order, which confinement period shall be
- computed from the date of initial confinement in the diversion center.
- 765 (b) The court shall determine that the defendant is at least 17 years of age at the time of
- sentencing, is capable both physically and mentally of maintaining paid employment in the
- community, and does not unnecessarily jeopardize the safety of the community.
- 768 (c) The department may assess and collect room and board fees from diversion center
- program participants at a level set by the department.
- 770 42-8-35.6.
- 771 (a) Notwithstanding any other terms or conditions of probation which may be imposed,
- a court sentencing a defendant to probation for an offense involving family violence as

such term is defined in Code Section 19-13-10 shall require as a condition of probation that the <u>defendant probationer</u> participate in a family violence intervention program certified pursuant to Article 1A of Chapter 13 of Title 19, unless the court determines and states on

- the record why participation in such a program is not appropriate.
- 777 (b) A court, in addition to imposing any penalty provided by law, when revoking a
- 778 defendant's probationer's probation for an offense involving family violence as defined by
- Code Section 19-13-10, or when imposing a protective order against family violence, shall
- order the defendant probationer to participate in a family violence intervention program
- certified pursuant to Article 1A of Chapter 13 of Title 19, unless the court determines and
- states on the record why participation in such program is not appropriate.
- 783 (c) The State Board of Pardons and Paroles, for a violation of parole for an offense
- 784 involving family violence as defined by Code Section 19-13-10, shall require the
- 785 conditional releasee parolee to participate in a family violence intervention program
- certified pursuant to Article 1A of Chapter 13 of Title 19, unless the State Board of Pardons
- and Paroles determines why participation in such a program is not appropriate.
- 788 (d) Unless the defendant probationer is indigent, the cost of the family violence
- intervention program as provided by this Code section shall be borne by the defendant
- 790 <u>probationer</u>. If the <u>defendant probationer</u> is indigent, then the cost of the program shall be
- determined by a sliding scale based upon the defendant's probationer's ability to pay.
- 792 42-8-35.7.
- 793 Unless the court has ordered more frequent such screenings, it shall be the duty of each
- 794 probation supervisor state supervision officer to administer or have administered a drug and
- alcohol screening not less than once every 60 days to any person who is placed on
- probation and who, as a condition of such probation, is required to undergo regular, random
- drug and alcohol screenings, provided that the drug and alcohol screenings required by this
- Code section shall be performed only to the extent that necessary funds therefor are
- appropriated in the state budget.
- 800 42-8-36.
- (a)(1) Any other provision of this article to the contrary notwithstanding, it shall be the
- duty of a probationer, as a condition of probation, to keep his or her state supervision
- 803 officer probation supervisor informed as to his or her residence. Upon the
- recommendation of the probation supervisor state supervision officer, the court may also
- require, as a condition of probation and under such terms as the court deems advisable,
- that the probationer keep the probation supervisor state supervision officer informed as
- to his or her whereabouts. The failure of a probationer to report to his probation

supervisor or her state supervision officer as directed or a return of non est inventus or other return to a warrant, for the violation of the terms and conditions of probation, that the probationer cannot be found in the county that appears from the records of the probation supervisor state supervision officer to be the probationer's county of residence shall automatically suspend the running of the probated sentence until the probationer shall personally report to the probation supervisor state supervision officer, is taken into custody in this state, or is otherwise available to the court; and such period of time shall not be included in computing creditable time served on probation or as any part of the time that the probationer was sentenced to serve. The effective date of the tolling of the sentence shall be the date that the state supervision officer returns the warrant showing non est inventus. Any officer authorized by law to issue or serve warrants may return the warrant for the absconded probationer showing non est inventus.

- (2) In addition to the provisions of paragraph (1) of this subsection, if the probation supervisor state supervision officer submits an affidavit to the court stating that a probationer has absconded and cannot be found, the running of the probated sentence shall be suspended effective on the date such affidavit is submitted to the court and continuing until the probationer shall personally report to the probation supervisor state supervision officer, is taken into custody in this state, or is otherwise available to the court.
- (b) Any unpaid fines, restitution, or any other moneys owed as a condition of probation shall be due when the probationer is arrested; but, if the entire balance of his <u>or her</u> probation is revoked, all the conditions of probation, including moneys owed, shall be negated by his <u>or her</u> imprisonment. If only part of the balance of the probation is revoked, the probationer shall still be responsible for the full amount of the unpaid fines, restitution, and other moneys upon his <u>or her</u> return to probation after release from imprisonment.

833 42-8-37.

(a) Upon the termination of the period of probation, the probationer shall be released from probation and shall not be liable to sentence for the crime for which probation was allowed; provided, however, the foregoing shall not be construed to prohibit the conviction and sentencing of the probationer for the subsequent commission of the same or a similar offense or for the subsequent continuation of the offense for which he or she was previously sentenced. The court may at any time cause the probationer to appear before it to be admonished or commended and, when satisfied that its action would be for the best interests of justice and the welfare of society, may discharge the probationer from further supervision.

(b) Upon the request of the chief judge of the court from which said person a probationer was sentenced, the case of each person probationer receiving a probated sentence of more than two years shall be reviewed by the probation supervisor state supervision officer responsible for that case after service of two years on probation, and a written report of the probationer's progress shall be submitted to the sentencing court along with the supervisor's state supervision officer's recommendation as to early termination. Upon the request of the chief judge of the court from which said person such probationer was sentenced, each such case shall be reviewed and a written report submitted annually thereafter, or more often if required, until the termination, expiration, or other disposition of the case.

852 42-8-38.

- (a) Whenever, within the period of probation, a probation supervisor state supervision officer believes that a probationer under his or her supervision has violated his or her probation in a material respect, he such officer may arrest the probationer without warrant, wherever found, and return him the probationer to the court granting the probation or, if under supervision in a county or judicial circuit other than that of conviction, to a court of equivalent original criminal jurisdiction within the county wherein the probationer resides for purposes of supervision. Any officer authorized by law to issue warrants may issue a warrant for the arrest of the probationer upon the affidavit of one having knowledge of the alleged violation, returnable forthwith before the court in which revocation proceedings are being brought.
- (b) The court, upon the probationer being brought before it, may commit him the probationer or release him the probationer with or without bail to await further hearing or it may dismiss the charge. If the charge is not dismissed at this time, the court shall give the probationer an opportunity to be heard fully at the earliest possible date on his or her own behalf, in person or by counsel, provided that, if the revocation proceeding is in a court other than the court of the original criminal conviction, the sentencing court shall be given ten days' written notice prior to a hearing on the merits.
- (c) After the hearing, the court may revoke, modify, or continue the probation. If the probation is revoked, the court may order the execution of the sentence originally imposed or of any portion thereof. In such event, the time that the defendant has served under probation shall be considered as time served and shall be deducted from and considered a part of the time he the probationer was originally sentenced to serve.
 - (d) In cases where the probation is revoked in a county other than the county of original conviction, the clerk of court in the county revoking probation may record the order of revocation in the judge's minute docket, which recordation shall constitute sufficient permanent record of the proceedings in that court. The clerk shall send one copy of the

order revoking probation to the department to serve as a temporary commitment and shall send the original order revoking probation and all other papers pertaining thereto to the county of original conviction to be filed with the original records. The clerk of court of the county of original conviction shall then issue a formal commitment to the department.

883 42-8-39.

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- In all criminal cases in which the defendant is found guilty or in which a plea of guilty or of nolo contendere is entered and in which the trial judge after imposing sentence further provides that the execution of the sentence shall be suspended, such provision shall not have the effect of placing the defendant on probation as provided in this article.
- 888 42-8-40.
- All reports, files, records, and papers of whatever kind relative to the state-wide probation system are declared to be confidential and shall be available only to the probation system officials and to the judge handling a particular case. They shall not be subject to process of subpoena. However, the commissioner may by written order declassify any such records Reserved.

42-8-41.

- All state and local departments, agencies, boards, bureaus, commissions, and committees shall cooperate with the probation officials state supervision officers.
- 897 42-8-42.
- The department may provide office space and clerical help wherever needed. The counties of this state shall cooperate in this respect and, wherever possible, shall furnish office space if needed Reserved.
- 901 42-8-43.
- Except as otherwise provided by law, any county probation system in existence on 902 903 February 8, 1956, shall not be affected by the passage of this article, regardless of whether 904 the law under which the system exists is specifically repealed by this article. The personnel 905 of the system shall continue to be appointed and employed under the same procedure as 906 used prior to February 8, 1956, and the system shall be financed under the same method 907 as it was financed prior to February 8, 1956. However, the substantive provisions of this 908 article and Chapter 9A of this title relative to probation shall be followed, and to this end 909 any probation officer of such system shall be deemed to be the same as a probation 910 supervisor state supervision officer, with the probation supervisor state supervision officer

assigned by the department serving in a liaison capacity between the county probation system and the department.

42-8-43.1.

- (a) This Code section shall apply to county probation systems of all counties of this state having a population of 400,000 or more according to the United States decennial census of 1980 or any future such census, any provision of Code Section 42-8-43 to the contrary notwithstanding. The department shall participate in the cost of the county probation systems subject to this Code section for fiscal years 1982-83 and 1983-84. The department shall compute the state cost per probationer on a state-wide basis for each of the aforesaid fiscal years pursuant to the formula used by the Office of Planning and Budget to determine the state cost for probation for budgetary purposes. For each of the aforesaid fiscal years, the department shall pay to the governing authority of each county maintaining a county probation system subject to this Code section the percentage shown below of the state-wide cost per probationer for each probationer being supervised under the respective county probation system as of the first day of each of said fiscal years:
- 926 (1) For fiscal year 1982-83, 10 percent; and
- 927 (2) For fiscal year 1983-84, 10-100 percent.
 - (b) The funds necessary to participate in the cost of county probation systems under subsection (a) of this Code section shall come from funds appropriated to the department for the purposes of providing state participation in the cost of county probation systems. The payments to counties provided for in subsection (a) of this Code section shall be made by, or pursuant to the order of, the department in single lump sum payment for each fiscal year, with the payment for fiscal year 1982-83 being made by May 1, 1983, and the one for fiscal year 1983-84 by May 1, 1984. As a condition necessary for a county to qualify for department participation in the cost of the county's probation system, the employees of such county probation systems shall be subject to the supervision, control, and direction of the department.
 - (c) Each county probation system subject to the provisions of this Code section shall become a part of the state-wide probation system provided for by this article effective on July 1, 1984, and shall be fully funded from state funds as a part of the state-wide probation system beginning with fiscal year 1984-85. The employees of said county probation systems, at their option, shall become employees of the department on the date said county systems become a part of the state-wide probation system and, on or after said date, said employees shall be subject to the salary schedules and other personnel policies of the department, except that the salaries of such employees shall not be reduced as a result of becoming employees of the department.

(d) When an employee of a county probation system of any county of this state having a population of 550,000 or more according to the United States decennial census of 1980 or any future such census becomes an employee of the department pursuant to subsection (c) of this Code section at the same or a greater salary, the change in employment shall not constitute involuntary separation from service or termination of employment within the meaning of any local retirement or pension system of which the employee was a member at the time of such change in employment, and the change in employment shall not entitle the employee to begin receiving any retirement or pension benefit whatsoever under any such local retirement or pension system.

42-8-43.2.

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(a) This Code section shall apply to county probation systems, including state court adult probation systems, of each county having a population of more than 100,000 in any metropolitan statistical area having a population of not less than 200,000 nor more than 230,000 according to the United States decennial census of 1980 or any future such census, any provision of Code Section 42-8-43 to the contrary notwithstanding. The department shall participate in the cost of the county probation systems subject to this Code section for fiscal year 1987-88. The department shall compute the state cost per probationer on a state-wide basis for such fiscal year pursuant to the formula used by the Office of Planning and Budget to determine the state cost for probation for budgetary purposes. For said fiscal year, the department shall pay to the governing authority of each county maintaining a county probation system subject to this Code section 10 percent of the state-wide cost per probationer for each probationer being supervised under the respective county probation system as of the first day of said fiscal year. The funds necessary to participate in the cost of county probation systems under this subsection shall come from funds appropriated to the department for the purposes of providing state participation in the cost of county probation systems. The payments to counties provided for in this subsection shall be made by, or pursuant to the order of, the department in single lump sum payment for fiscal year 1987-88, with the payment being made by May 1, 1988. As a condition necessary for a county to qualify for department participation in the cost of the county's probation system, the county shall cause to be made an independent audit of the financial affairs and transactions of all funds and activities of the county probation system and agree to be responsible for any discrepancies, obligations, debts, or liabilities of such county probation system which may exist prior to the department's participation in the cost of the county's probation system. As a further condition necessary for a county to qualify for department participation in the cost of the county's probation system, the employees of such county

probation systems shall be subject to the supervision, control, and direction of the department.

(b) The county probation system of any such county shall become a part of the state-wide probation system provided for by this article effective July 1, 1988, and shall be fully funded from state funds as part of the state-wide probation system beginning with fiscal year 1988-89. The employees of such county probation system, at their option, shall become employees of the department on the date said county system becomes a part of the state-wide probation system and, on or after said date, said employees shall be subject to the salary schedules and other personnel policies of the department, except that the salaries of such employees shall not be reduced as a result of becoming employees of the department.

(c) When an employee of a county probation system becomes an employee of the department pursuant to subsection (b) of this Code section at the same or a greater salary, the change in employment shall not constitute involuntary separation from service or termination of employment within the meaning of any local retirement or pension system of which the employee was a member at the time of such change in employment, and the change in employment shall not entitle the employee to begin receiving any retirement or pension benefit whatsoever under any such local retirement or pension system.

(d) No leave time accrued by an employee of a county probation system shall be transferred when the employee becomes a state employee. Any leave time accrued by an employee of such county probation system shall be satisfied as a debt owed to the employee by the county.

1004 42-8-43.3.

(a) This Code section shall apply to county probation systems, including state court adult probation systems, of each county having a population of 250,000 or more according to the United States decennial census of 1980 or any future such census, any provision of Code Section 42-8-43 to the contrary notwithstanding. The department shall participate in the cost of the county probation systems subject to this Code section for fiscal year 1988-89. For said fiscal year, the department shall pay to the governing authority of each county maintaining a county probation system subject to this Code section 10 percent of the annual county probation system budget as of the first day of said fiscal year. The funds necessary to participate in the cost of county probation systems under this subsection shall come from funds appropriated to the department for the purposes of providing state participation in the cost of county probation systems. The payments to counties provided for in this subsection shall be made by, or pursuant to the order of, the department in single lump sum payment for fiscal year 1988-89, with the payment being made by May 1, 1989. As a condition

1018 necessary for a county to qualify for department participation in the cost of the county's 1019 probation system, the county shall cause to be made an independent audit of the financial 1020 affairs and transactions of all funds and activities of the county probation system and agree 1021 to be responsible for any discrepancies, obligations, debts, or liabilities of such county probation system which may exist prior to the department's participation in the cost of the 1022 1023 county's probation system. As a further condition necessary for a county to qualify for 1024 department participation in the cost of the county's probation system, the employees of 1025 such county probation systems shall be subject to the supervision, control, and direction 1026 of the department. 1027 (b) The county probation system of any such county shall become a part of the state-wide probation system provided for by this article effective July 1, 1989, and shall be fully 1028 1029 funded from state funds as part of the state-wide probation system beginning with fiscal year 1989-90. The employees of such county probation system, at their option, shall 1030 1031 become employees of the department on the date said county system becomes a part of the 1032 state-wide probation system and, on or after said date, said employees shall be subject to 1033 the salary schedules and other personnel policies of the department, except that the salaries 1034 of such employees shall not be reduced as a result of becoming employees of the 1035 department. 1036 (c) When an employee of a county probation system becomes an employee of the 1037 department pursuant to subsection (b) of this Code section at the same or a greater salary, 1038 the change in employment shall not constitute involuntary separation from service or 1039 termination of employment within the meaning of any local retirement or pension system 1040 of which the employee was a member at the time of such change in employment, and the change in employment shall not entitle the employee to begin receiving any retirement or 1041 1042 pension benefit whatsoever under any such local retirement or pension system. 1043 (d) No leave time accrued by an employee of a county probation system shall be 1044 transferred when the employee becomes a state employee. Any leave time accrued by an 1045 employee of such county probation system shall be satisfied as a debt owed to the 1046 employee by the county.

1047 42-8-44.

This article shall be liberally construed so that its purposes may be achieved."

1049 PART IV
1050 PARDONS AND PAROLES
1051 SECTION 4-1.

Said Title 42 is further amended by revising Code Section 42-9-9, relating to board employees, as follows:

1054 "42-9-9.

1055 (a) The board may appoint such clerical, stenographic, supervisory, investigatory, and expert assistants and may establish such qualifications for its employees as it deems necessary. In its discretion, the board may discharge such employees.

(b) A certified parole officer leaving the service of the board under honorable conditions who has accumulated 20 or more years of service with the board as a certified parole officer shall be entitled as part of such employee's compensation to retain his or her board issued badge. A certified parole officer employed with the board who is killed in the line of duty shall be entitled to have his or her board issued badge given to a surviving family member. Where a certified parole officer leaves the service of the board due to a disability that arose in the line of duty and such disability prevents the parole officer from further serving as a peace officer, then such disabled parole officer shall be entitled to retain his or her board issued badge regardless of the officer's number of years of service with the board. The board is authorized to promulgate rules and regulations for the implementation of this subsection."

SECTION 4-2.

Said title is further amended by revising Code Section 42-9-20, relating to general duties of the board, as follows:

1072 "42-9-20.

In all cases in which the chairman of the board or any other member designated by the board has suspended the execution of a death sentence to enable the full board to consider and pass on same, it shall be mandatory that the board act within a period not exceeding 90 days from the date of the suspension order. In the cases which the board has power to consider, the board shall be charged with the duty of determining which inmates serving sentences imposed by a court of this state may be released on pardon or parole and fixing the time and conditions thereof. The board shall also be charged with the duty of supervising all persons placed on parole, of determining violations thereof of parole and of taking action with reference thereto, and of making such investigations as may be necessary, and of aiding parolees or probationers in securing employment. It shall be the duty of the board personally to study the cases of those inmates whom the board has power

to consider so as to determine their ultimate fitness for such relief as the board has power to grant. The board by an affirmative vote of a majority of its members shall have the power to commute a sentence of death to one of life imprisonment."

1087 **SECTION 4-3.**

- Said title is further amended by revising Code Section 42-9-21, relating to supervision of persons placed on parole or other conditional release, as follows:
- 1090 "42-9-21.
- (a) The board shall have the function and responsibility of supervising all persons placed
- on parole or other conditional release by the board.
- 1093 (b) The board is authorized to maintain and operate or to enter into memoranda of
- agreement or other written documents evidencing contracts with other state agencies,
- persons, or any other entities for transitional or intermediate or other services or for
- programs deemed by the board to be necessary for parolees or others conditionally released
- from imprisonment by order of the board and to be authorized to require as a condition of
- relief that the <u>offender parolee</u> pay directly to the <u>any provider and the board</u> a reasonable
- fee for said services or programs transitional or intermediate or other services or for
- programs deemed by the board to be necessary for parolees or conditional releasees.
- 1101 (c)(b) In all cases where restitution is applicable, the board shall collect during the parole
- period those sums determined to be owed to the victim."

1103 **SECTION 4-4.**

- Said title is further amended by repealing Code Section 42-9-22, relating to construction of
- the chapter, which reads as follows:
- 1106 "42-9-22.
- This chapter shall be liberally construed so that its purpose may be achieved."
- 1108 **SECTION 4-5.**
- Said title is further amended by revising Code Section 42-9-41, relating to duty of the board
- 1110 to obtain and place in records information respecting persons subject to relief or placed on
- 1111 probation, as follows:
- 1112 "42-9-41.
- 1113 (a) It shall be the duty of the board to obtain and place in its permanent records
- information as complete as may be practicable on every person who may become subject
- to any relief which may be within the power of the board to grant. The information shall
- be obtained as soon as possible after imposition of the sentence and shall include:

1117 (1) A complete statement of the crime for which the person is sentenced, the circumstances of the crime, and the nature of the person's sentence;

- 1119 (2) The court in which the person was sentenced;
- 1120 (3) The term of his <u>or her</u> sentence;
- 1121 (4) The name of the presiding judge, the prosecuting officers, the investigating officers,
- and the attorney for the person convicted;
- 1123 (5) A copy of presentence investigation and any previous court record;
- 1124 (6) A fingerprint record;

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- 1125 (7) A copy of all probation reports which may have been made; and
- 1126 (8) Any social, physical, mental, or criminal record of the person.

(b) The board in its discretion may also obtain and place in its permanent records similar information on each person who may be placed on probation. The board shall immediately examine such records and any other records obtained and make such other investigation as it may deem necessary. It shall be the duty of the court and of all probation officers state supervision officers and other appropriate officers to furnish to the board, upon its request, such information as may be in their possession or under their control. The Department of Behavioral Health and Developmental Disabilities and all other state, county, and city agencies, all sheriffs and their deputies, and all peace officers shall cooperate with the board and shall aid and assist it in the performance of its duties. The board may make such rules as to the privacy or privilege of such information and as to its use by persons other than the board and its staff as may be deemed expedient in the performance of its duties."

1138 **SECTION 4-6.**

Said title is further amended by revising subsection (d) of Code Section 42-9-42, relating to procedure for granting relief from sentence, as follows:

"(d)(1) Any person who is paroled shall be released on such terms and conditions as the board shall prescribe. The board shall diligently see that no peonage is allowed in the guise of parole relationship or supervision. The parolee shall remain in the legal custody of the board until the expiration of the maximum term specified in his <u>or her</u> sentence or until he <u>or she</u> is pardoned by the board.

(2) The board may require the payment of a parole supervision fee of at least \$10.00 per month as a condition of parole or other conditional release. The monthly amount shall be set by rule of the board and shall be uniform state wide. The board may require or the parolee or person under conditional release may request that up to 24 months of the supervision fee be paid in advance of the time to be spent on parole or conditional release. In such cases, any advance payments are nonreimbursable in the event of parole or conditional release is otherwise

terminated prior to the expiration of the sentence being served on parole or conditional release. Such fees shall be collected by the board to be paid into the general fund of the state treasury."

SECTION 4-7.

Said title is further amended by revising subsection (a) of Code Section 42-9-44, relating to specification of terms and conditions of parole, as follows:

"(a) The board, upon placing a person on parole, shall specify in writing the terms and conditions thereof. A certified copy of the conditions shall be given to the parolee and the Department of Corrections. Thereafter, a copy shall be sent to the clerk of the court in which the person was convicted. The board shall adopt general rules concerning the terms and conditions of parole and concerning what shall constitute a violation thereof and shall make special rules to govern particular cases. The rules, both general and special, may include, among other things, a requirement that the parolee shall not leave this state or any definite area in this state without the consent of the board; that the parolee shall contribute to the support of his or her dependents to the best of the parolee's ability; that the parolee shall make reparation or restitution for his or her crime; that the parolee shall abandon evil associates and ways; and that the parolee shall carry out the instructions of his or her parole supervisor state supervision officer, and, in general, so comport himself or herself as the parolee's supervisor state supervision officer shall determine. A violation of the terms of parole may render the parolee liable to arrest and a return to a penal institution to serve out the term for which the parolee was sentenced."

SECTION 4-8.

Said title is further amended by repealing subsection (d) of Code Section 42-9-48, relating to arrest of parolee or conditional release violator, which reads as follows:

"(d) Any parole supervisor, when he has reasonable ground to believe that a parolee or conditional releasee has violated the terms or conditions of his parole or conditional release in a material respect, shall notify the board or some member thereof; and proceedings shall thereupon be had as provided in this Code section."

SECTION 4-9.

- Said title is further amended by revising Code Section 42-9-57, relating to effect of chapter on probation power of courts, as follows:
- 1184 "42-9-57.

Nothing contained in this chapter shall be construed as repealing any power given to any court of this state to place offenders on probation or to supervise the same nor any power

of any probation agency set up in any county of the state in conjunction with the courts. 1187 The board shall be authorized to cooperate with any such agencies, except that it shall not 1188 1189 assume or pay any financial obligations thereof. The board shall also be authorized to 1190 cooperate with the courts for the probation of offenders in those counties in which there is 1191 no existing probation agency, when a court so requests."

1192 SECTION 4-10.

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1193 Said title is further amended by revising subsection (b) of Code Section 42-9-90, relating to application fee required for transfer, as follows:

"(b) The Department of Corrections and the State Board of Pardons and Paroles are authorized to require any nonindigent adult offender to pay a \$25.00 application fee when applying to transfer his or her supervision from Georgia to any other state or territory pursuant to the provisions of Articles 3 and Article 4 of this chapter."

1199 PART V

CROSS-REFERENCES 1200

1201 SECTION 5-1.

Code Section 15-11-84 of the Official Code of Georgia Annotated, relating to sharing of 1202 1203 confidential information, is amended by revising subsection (b) as follows:

"(b) Governmental entities, state, county, consolidate governments, or municipal government departments, boards, or agencies shall exchange with each other all information not held as confidential pursuant to federal law and relating to a child which may aid a governmental entity in the assessment, treatment, intervention, or rehabilitation of a child, notwithstanding Code Section 15-1-15, 15-11-9.1, subsection (d) of Code Section 15-11-10, Code Section 15-11-66.1, 15-11-75, 15-11-81, 15-11-82, 15-11-174, 20-2-751.2, 20-14-40, 24-9-40.1, 24-9-41, 24-9-42, 26-4-5, 26-4-80, 26-5-17, 31-5-5, 31-33-6, 37-1-53, 37-2-9.1, 42-5-36, 42-8-40, 42-8-106, 42-9A-3, 49-5-40, 49-5-41, 49-5-41.1, 49-5-44, 49-5-45, 49-5-183, 49-5-184, 49-5-185, or 49-5-186, in order to serve the best interest of the child. Information which is shared pursuant to this subsection shall not be utilized to assist in the prosecution of the child in juvenile court or superior court or utilized to the detriment of the child."

1216 SECTION 5-2.

1217 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is 1218 amended by revising subsection (b) of Code Section 16-6-5.1, relating to sexual assault 1219 against persons in custody, as follows:

"(b) A probation or parole state supervision officer or other custodian or supervisor of another person referred to in this Code section commits sexual assault when he or she engages in sexual contact with another person who is a probationer or parolee under the supervision of said probation or parole such state supervision officer or who is in the custody of law or who is enrolled in a school or who is detained in or is a patient in a hospital or other institution and such actor has supervisory or disciplinary authority over such other person. A person convicted of sexual assault shall be punished by imprisonment for not less than ten nor more than 30 years; provided, however, that any person convicted of the offense of sexual assault under this subsection of a child under the age of 14 years shall be punished by imprisonment for not less than 25 nor more than 50 years. Any person convicted under this subsection of the offense of sexual assault shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2."

SECTION 5-3.

Said title is further amended by revising subsection (b) of Code Section 16-10-24, relating to obstructing or hindering law enforcement officers, as follows:

"(b) Whoever knowingly and willfully resists, obstructs, or opposes any law enforcement officer, prison guard, correctional officer, probation supervisor, parole supervisor state supervision officer, or conservation ranger in the lawful discharge of his or her official duties by offering or doing violence to the person of such officer or legally authorized person is shall be guilty of a felony and shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years."

SECTION 5-4.

Said title is further amended by revising subsection (d) of Code Section 16-11-37, relating to terroristic threats or acts, as follows:

- "(d) A person who commits or attempts to commit a terroristic threat or act with the intent to retaliate against any person for:
- (1) Attending a judicial or administrative proceeding as a witness, attorney, judge, or party or producing any record, document, or other object in a judicial or official proceeding; or
 - (2) Providing to a law enforcement officer, adult or juvenile probation officer, state supervision officer, prosecuting attorney, or judge any information relating to the commission or possible commission of an offense under the laws of this state or of the United States or a violation of conditions of bail, pretrial release, probation, or parole shall be guilty of the offense of a terroristic threat or act and, upon conviction thereof, shall be punished, for a terroristic threat, by imprisonment for not less than five nor more than

ten years or by a fine of not less than \$50,000.00, or both, and, for a terroristic act, by 1256 imprisonment for not less than five nor more than 20 years or by a fine of not less than \$100,000.00, or both."

1258 SECTION 5-5.

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1259 Said title is further amended by revising paragraph (12) of subsection (c) of Code Section 1260 16-11-127.1, relating to carrying weapons within school safety zones, at school functions, 1261 or on school property, as follows:

> "(12) Probation supervisors State supervision officers employed by and under the authority of the Department of Corrections pursuant to Article 2 of Chapter 8 of Title 42, known as the 'State-wide Probation Act,' when specifically designated and authorized in writing by the director of the Division of Probation Division of State Supervision;"

1266 **SECTION 5-6.**

Said title is further amended by revising paragraph (9) of subsection (a) and subsection (b) 1267 1268 of Code Section 16-11-130, relating to exemptions from Code Sections 16-11-126 through 1269 16-11-128, as follows:

> "(9) Chief probation officers, probation officers, intensive probation officers, and surveillance officers State supervision officers employed by and under the authority of the Department of Corrections pursuant to Article 2 of Chapter 8 of Title 42, known as the 'State-wide Probation Act,' when specifically designated and authorized in writing by the director of Division of Probation the Division of State Supervision;"

"(b) Code Sections 16-11-126 through 16-11-128 shall not apply to or affect persons who at the time of their retirement from service with the Department of Corrections were chief probation officers, probation officers, intensive probation officers, or surveillance state supervision officers, when specifically designated and authorized in writing by the director of Division of Probation the Division of State Supervision."

1280 SECTION 5-7.

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is 1281 1282 amended by revising subsection (d) of Code Section 17-6-1.1, relating to electronic pretrial release and monitoring program for defendants, as follows: 1283

"(d) A defendant may not be released to, or remain in, an electronic pretrial release and monitoring program who has any other outstanding warrants, accusations, indictments, holds, or incarceration orders from any other court, law enforcement agency, or probation or parole state supervision officer that require the posting of bond or further adjudication."

1288 **SECTION 5-8.**

1289 Said title is further amended by revising Code Section 17-14-8, relating to apportionment of 1290 payments for fines and restitution, as follows:

1291 "17-14-8.

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- 1292 (a) In any case in which a court sentences an offender to pay restitution and a fine, if the 1293 court permits the offender to pay such restitution and fine in other than a lump sum, the 1294 clerk of any superior court of this state, probation officer or parole state supervision officer, 1295 or other official who receives such partial payments shall apply not less than one-half of 1296 each payment to the restitution before paying any portion of such fine or any forfeitures, 1297 costs, fees, or surcharges provided for by law to any agency, department, commission, 1298 committee, authority, board, or bureau of state or local government.
 - (b) The clerk of any court of this state, probation officer or parole state supervision officer, or other official who receives partial payments for restitution shall pay the restitution amount to the victim as provided in the restitution order not later than the last day of each month, provided that the amount exceeds \$100.00. If the amount does not exceed \$100.00, the clerk of any court of this state, probation officer or parole state supervision officer, or other official may allow the amount of restitution to accumulate until such time as it exceeds \$100.00 or until the end of the next calendar quarter, whichever occurs first."

1306 SECTION 5-9.

Said title is further amended by revising subsection (c) of Code Section 17-14-14, relating 1307 1308 to restitution payments, as follows:

"(c) Until such time as the restitution has been paid or the sentence has been completed, the clerk of court or the probation or parole state supervision officer assigned to the case, whoever is responsible for collecting restitution, shall review the case not less frequently than twice yearly to ensure that restitution is being paid as ordered. If the restitution was ordered to be made within a specific period of time, the case shall be reviewed at the end of the specific period of time to determine if the restitution has been paid in full. The final review shall be conducted before the sentence or probationary or parole period expires. If it is determined at any review that restitution is not being paid as ordered, a written report of the violation shall be filed with the court on a form prescribed by the Council of Superior Court Clerks of Georgia."

1319 SECTION 5-10.

1320 Code Section 19-13-51 of the Official Code of Georgia Annotated, relating to definitions for the "Family Violence and Stalking Protective Order Registry Act," is amended by revising 1322 paragraph (4) as follows:

"(4) 'Law enforcement officer' means any agent or officer of this state, or a political subdivision or municipality thereof, who, as a full-time or part-time employee, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws and whose duties include the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime. Such term also includes the following: state or local officer, sheriff, deputy sheriff, dispatcher, 9-1-1 operator, police officer, prosecuting attorney, member of the State Board of Pardons and Paroles, a hearing officer and parole officer of the State Board of Pardons and Paroles, and a probation state supervision officer of the Department of Corrections."

SECTION 5-11.

Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and agencies, is amended by revising subsections (b) and (g) of Code Section 35-3-36, relating to duties of state criminal justice agencies as to submission of fingerprints, photographs, and other identifying data to Georgia Crime Information Center, as follows:

"(b) It shall be the duty of all chiefs of police, sheriffs, prosecuting attorneys, courts, judges, parole and probation state supervision officers, wardens, or other persons in charge of penal and correctional institutions in this state to furnish the center with any other data deemed necessary by the center to carry out its responsibilities under this article."

"(g) All persons in charge of law enforcement agencies, all clerks of court, all municipal judges where they have no clerks, all magistrates, and all persons in charge of state and county probation and parole state supervision offices shall supply the center with the information described in Code Section 35-3-33 on the basis of the forms and instructions to be supplied by the center."

SECTION 5-12.

Code Section 40-5-83 of the Official Code of Georgia Annotated, relating to establishment and approval of driver improvement clinics and programs, is amended by revising subsection (d) as follows:

"(d) Notwithstanding the provisions of any law or rule or regulation which prohibits any individual who is a probation state supervision officer or other official or employee of the probation state supervision division of the Department of Corrections or a spouse of such individual from owning, operating, instructing at, or being employed by a driver improvement clinic, any individual who is a probation state supervision officer or other official or employee of the probation state supervision division of the Department of Corrections or a spouse of such individual who owns, operates, instructs at, or is employed

by a driver improvement clinic on June 1, 1985, and who in all respects is and remains qualified to own, operate, instruct at, or be employed by a driver improvement clinic is expressly authorized to continue on and after June 1, 1985, to engage in such activities. No person who owns, operates, or is employed by a private company which has contracted to provide probation services for misdemeanor cases shall be authorized to own, operate, be an instructor at, or be employed by a driver improvement clinic or a DUI Alcohol or Drug Use Risk Reduction Program."

1365 **SECTION 5-13.**

- Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
- by revising Code Section 42-1-10, relating to preliminary urine screen drug tests, as follows:
- 1368 "42-1-10.
- (a) Any probation state supervision officer, parole private probation officer as such term
- is defined in Code Section 42-8-100, or other an official or employee of the Department
- of Corrections who supervises any person covered under the provisions of paragraphs (1)
- through (7) of this subsection shall be exempt from the provisions of Chapter 22 of Title
- 1373 31 for the limited purposes of administering a preliminary urine screen drug test to any
- person who is:

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- 1375 (1) Incarcerated;
- 1376 (2) Released as a condition of probation for a felony or misdemeanor;
- 1377 (3) Released as a condition of conditional release;
- 1378 (4) Released as a condition of parole;
- 1379 (5) Released as a condition of provisional release;
- 1380 (6) Released as a condition of pretrial release; or
- 1381 (7) Released as a condition of control release.
- 1382 (b) The Department of Corrections and the State Board of Pardons and Paroles shall
- develop a procedure for the performance of preliminary urine screen drug tests in
- accordance with the manufacturer's standards for certification. Probation officers, parole
- State supervision officers, private probation officers as such term is defined in Code
- Section 42-8-100, or other officials or employees of the Department of Corrections who
- are supervisors of any person covered under paragraphs (1) through (7) of subsection (a)
- accordance with such procedure. Such procedure shall include instructions as to a

of this Code section shall be authorized to perform preliminary urine screen drug tests in

confirmatory test by a licensed clinical laboratory where necessary."

SECTION 5-14.

Said title is further amended by revising subparagraph (a)(2)(A) of Code Section 42-1-12, relating to the State Sexual Offender Registry, as follows:

"(A) With respect to a sexual offender who is sentenced to probation without any sentence of incarceration in the state prison system or who is sentenced pursuant to Article 3 of Chapter 8 of this title, relating to first offenders, the Division of Probation State Supervision of the Department of Corrections;"

SECTION 5-15.

Said title is further amended by revising paragraphs (4) and (5) of subsection (e) of Code Section 42-8-101, relating to the County and Municipal Probation Advisory Council, as follows:

"(4) To promulgate rules and regulations establishing a 40 hour initial orientation for newly hired private probation officers and for 20 hours per annum of continuing education for private probation officers, provided that the 40 hour initial orientation shall not be required of any person who has successfully completed a probation or parole state supervision officer basic course of training certified by the Georgia Peace Officer Standards and Training Council or any private probation officer who has been employed by a private probation corporation, enterprise, or agency for at least six months as of July 1, 1996;

(5) To promulgate rules and regulations establishing a 40 hour initial orientation for probation officers employed by a county, municipality, or consolidated government that has established probation services and for 20 hours per annum of continuing education for such probation officers, provided that the 40 hour initial orientation shall not be required of any person who has successfully completed a probation or parole state supervision officer basic course of training certified by the Georgia Peace Officer Standards and Training Council or any probation officer who has been employed by a

county, municipality, or consolidated government as of March 1, 2006;"

SECTION 5-16.

Said title is further amended by revising subsection (a) of Code Section 42-8-102, relating to uniform professional standards and uniform contract standards, as follows:

"(a) The uniform professional standards contained in this subsection shall be met by any person employed as and using the title of a private probation officer or probation officer. Any such person shall be at least 21 years of age at the time of appointment to the position of private probation officer or probation officer and must have completed a standard two-year college course or have four years of law enforcement experience; provided,

however, that any person employed as a private probation officer as of July 1, 1996, and who had at least six months of experience as a private probation officer or any person employed as a probation officer by a county, municipality, or consolidated government as of March 1, 2006, shall be exempt from such college requirements. Every private probation officer shall receive an initial 40 hours of orientation upon employment and shall receive 20 hours of continuing education per annum as approved by the council, provided that the 40 hour initial orientation shall not be required of any person who has successfully completed a probation or parole state supervision officer basic course of training certified by the Peace Officer Standards and Training Council or any private probation officer who has been employed by a private probation corporation, enterprise, or agency for at least six months as of July 1, 1996, or any person employed as a probation officer by a county, municipality, or consolidated government as of March 1, 2006. In no event shall any person convicted of a felony be employed as a probation officer or utilize the title of probation officer."

SECTION 5-17.

Code Section 45-9-81 of the Official Code of Georgia Annotated, relating to definitions for the Georgia State Indemnification Fund, is amended by revising paragraph (10) as follows:

"(10) 'Prison guard' means any person employed by the state or any political subdivision thereof whose principal duties relate to the supervision and incarceration of persons accused or convicted of the violation of the criminal laws of this state or any political subdivision thereof. Such term shall also mean any probation supervisor or parole state supervision officer who is required to be certified under Chapter 8 of Title 35, the 'Georgia Peace Officer Standards and Training Act,' and whose principal duties directly relate to the supervision of adult probationers or adult parolees. Such term also means any person employed by the state or any political subdivision thereof whose principal duties include the supervision of youth who are charged with or adjudicated for an act which if committed by adults would be considered a crime."

SECTION 5-18.

1454 Code Section 49-4A-8 of the Official Code of Georgia Annotated, relating to commitment 1455 of delinquent or unruly children, is amended by revising paragraph (1) of subsection (i) as 1456 follows:

"(i)(1) A child who has been committed to the department as a delinquent or unruly child for detention in a youth development center or who has been otherwise taken into custody and who has escaped therefrom or who has been placed under supervision and broken the conditions thereof may be taken into custody without a warrant by a sheriff, deputy

sheriff, constable, police officer, probation officer, parole state supervision officer, or any other officer of this state authorized to serve criminal process, upon a written request made by an employee of the department having knowledge of the escape or of the violation of conditions of supervision. Before a child may be taken into custody for violation of the conditions of supervision, the written request mentioned above must be reviewed by the commissioner or his <u>or her</u> designee. If the commissioner or his <u>or her</u> designee finds that probable cause exists to believe that the child has violated his <u>or her</u> conditions of supervision, <u>he the commissioner or his or her designee</u> may issue an order directing that the child be picked up and returned to custody."

1470 **SECTION 5-19.**

- 1471 Code Section 15-1-15, relating to drug court divisions, is amended by replacing "probation
- officers" with "state supervision officers" wherever such term occurs.
- 1473 **SECTION 5-20.**
- 1474 The Official Code of Georgia Annotated is amended by replacing "probation officer" with
- 1475 "state supervision officer" wherever such term occurs in:
- 1476 (1) Code Section 16-10-33, relating to removal or attempted removal of weapon from
- 1477 public official;
- 1478 (2) Code Section 17-10-9.1, relating to voluntary surrender to county jail or correctional
- institution;

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- 1480 (3) Code Section 19-7-52, relating to whom child support payments are made;
- 1481 (4) Code Section 19-11-21, relating to payment of support to the Department of Human
- 1482 Services;
- 1483 (5) Code Section 40-5-81, relating to driver improvement programs optional;
- 1484 (6) Code Section 42-8-112, relating to proof of compliance required for reinstatement
- of certain drivers' licenses and for obtaining probationary license;
- 1486 (7) Code Section 42-8-114, relating to specifying provider for ignition interlock device;
- 1487 (8) Code Section 42-8-151, relating to definitions in the "Probation Management Act";
- 1488 (9) Code Section 43-12A-5, relating to ignition interlock device provider not to operate
- under any name deceptively similar to another business; and
- 1490 (10) Code Section 49-3-6, relating to functions of county department of family and
- children services.
- 1492 **SECTION 5-21.**
- 1493 The Official Code of Georgia Annotated is amended by replacing "chief probation officer"
- with "chief state supervision officer" wherever such term occurs in:

1495	(1) Code Section 42-8-151, relating to definitions in the "Probation Management Act";
1496	and
1497	(2) Code Section 42-8-155, relating to penalty for probation violation.
1498	SECTION 5-22.
1499	Code Section 42-8-72 of the Official Code of Georgia Annotated, relating to community
1500	service as a condition of probation, is amended by replacing "probation supervisor" with
1501	"state supervision officer" wherever such term occurs.
1502	SECTION 5-23.
1503	Code Section 16-10-33 of the Official Code of Georgia Annotated, relating to removal or
1504	attempted removal of weapon from public official, is amended by replacing "parole
1505	supervisor" with "state supervision officer" wherever such term occurs.
1506	PART VI
1507	SAVINGS CLAUSE, EFFECTIVE DATE,
1508	AND REPEALER
1509	SECTION 6-1.
1510	This Act shall not be construed to apply to any offense committed before July 1, 2010. Any
1511	such offense shall be prosecuted as provided by the statute in effect at the time the offense
1512	was committed.
1513	SECTION 6-2.
1514	This Act shall become effective on July 1, 2010.
1515	SECTION 6-3.
1516	All laws and parts of laws in conflict with this Act are repealed.